

401 KAR 50:035. Permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: 401 KAR Chapters 50 through 65; KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; 40 CFR Parts 51, 52, 60, 70, 72, 73, 75, 76, 77, and 78; 42 USC 7401-7671q, July 21, 1992 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation combines construction and operating permits into one permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

- (1) "Acid Rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 76, 77, and 78. 40 CFR Parts 72, 73, 75, 76, 77, and 78 are incorporated by reference in Section 11 of this administrative regulation.
- (2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by P.L. 101-549 (November 15, 1990).
- (3) "Administrative permit amendment" means a revision to a permit that:
 - (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;
 - (c) Requires more frequent monitoring or reporting by the permittee;
 - (d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;
 - (e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.
- (4) "Affected source" means a source that includes one (1) or more affected units.
- (5) "Affected states" means those states:
 - (a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation, or

- (b) That are within fifty (50) miles of the proposed permitted source.
- (6) "Affected unit" means a unit that is subject to the Acid Rain program.
- (7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.
- (8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).
- (9) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.
- (10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.
- (11) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the Acid Rain program, means the "designated representative."
- (12) "Draft permit" means the version of a permit which the cabinet offers for the applicable public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.
- (13) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (14) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 29, 1993.
- (15) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the Acid Rain program.
- (16) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993, or a source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.
- (17) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

- (18) "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:
- (a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;
 - (b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 through 7515 (Title I of the Act).
 - (c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section II 1 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration.
 - (d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act).
 - (e) Standards or requirements of the Acid Rain program.
 - (f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.
 - (g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).
 - (h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).
 - (i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).
 - (j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.
- (19) "Final permit" means:
- (a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.
 - (b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.
- (20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (21) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.
- (22) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same

person, or persons under common control, and that belong to a single major industrial grouping, (i.e., all have the same two-digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21), which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

- (a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061, made effective November 29, 1993, or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.
- (b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one of the following categories:
 - 1. Coal cleaning plants (with thermal dryers);
 - 2. Kraft pulp mills;
 - 3. Portland cement plants;
 - 4. Primary zinc smelters;
 - 5. Iron and steel mills;
 - 6. Primary aluminum ore reduction plants;
 - 7. Primary copper smelters;
 - 8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - 9. Hydrofluoric, sulfuric, or nitric acid plants;
 - 10. Petroleum refineries;
 - 11. Lime plants;
 - 12. Phosphate rock processing plants;
 - 13. Coke oven batteries;
 - 14. Sulfur recovery plants;
 - 15. Carbon black plants (furnace process);
 - 16. Primary lead smelters;
 - 17. Fuel conversion plant;
 - 18. Sintering plants;
 - 19. Secondary metal production plants;
 - 20. Chemical process plants;
 - 21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
 - 22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
 - 23. Taconite ore processing plants;
 - 24. Glass fiber processing plants;
 - 25. Charcoal production plants;
 - 26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
 - 27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous

air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

- (c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:
1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"
 2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
 3. For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM10.
- (23) "Minor source" means a stationary source that is required- to obtain a permit pursuant to this administrative regulation and that is not a major source.
- (24) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.
- (25) "Phase 11" means the Acid Rain program period beginning January 1, 2000, and continuing thereafter.
- (26) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the Acid Rain program.
- (27) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
- (28) "Regulated air pollutant" means the following:
- (a) For sources subject to 40 CFR Part 70:
 1. Nitrogen oxides;
 2. Volatile organic compounds;
 3. A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);
 4. A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);
 5. A Class I or Class 11 substance subject to a standard

promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and

- (b) For state origin requirements:
 - 1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 53:010; and
 - 2. A pollutant listed in, 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.
- (29) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.
- (30) "Responsible official" means one of the following:
 - (a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - 1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - 2. The delegation of authority to the representative is approved in advance by the cabinet;
 - (b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
 - (c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or
 - (d) For the acid rain portion of a permit for an affected source, the designated representative.
- (31) "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (32) "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.
- (33) "State Implementation Plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.
- (34) "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit.

- (35) "State-origin requirement" means an applicable requirement that is not mandated by 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.
- (36) "Stationary source" means a building, structure, affected facility, or installation that permits or may emit a regulated air pollutant.
- (37) "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.
- (38) "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

- (1) A source shall be exempt from this administrative regulation if:
 - (a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or
 - (b) The source is a minor source that;
 - 1. Emits or has the potential to emit less than twenty-five (25) tons per year of a regulated air pollutant, except as provided in subparagraphs 2. and 3. of this paragraph, or a lesser amount if specified in an applicable requirement; and
 - 2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and
 - 3. Is not subject to a requirement in 40 CFR Parts 60, 61, or-63; 401 KAR-63:021; or 401 KAR 63:022; and
 - 4. Is not required by the U.S. EPA to obtain a permit.
- (2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirements. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.
 - (a) An asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987;
 - (b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA;
 - (c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;
 - (d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;
 - (e) Vehicles used for the transport of passengers or freight; and
 - (f) Publicly owned roads.

- (3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria:
- (a) The activity shall be included in the permit application with a request that the activity be exempt from permitting;
 - (b) The activity shall not be subject to an applicable requirement;
 - (c) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject;
 - (d) The activity shall have a potential to emit of less than five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.
 - (e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA;
 - (f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.
 - (g) The activity shall not be the incineration of medical waste.
- (4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request.
- (5) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.
- (a) Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010, if the increase does not subject the source to an applicable requirement.
 - 1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.
 - 2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.
 - (b) After the issuance of a draft permit, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

Section 3. Permit Applications.

- (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is

incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.
 - a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation.
 - b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) of this administrative regulation.
2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) and Section 5(2)(b) of this administrative regulation.
3. Existing minor sources required to have a state origin permit. An existing source that is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin permits pursuant to Section 5(1)(c) of this administrative regulation.
4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source receives a permit for the entire source, if a timely and complete application is filed, shall file an application using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. The applications for these sources shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.
5. A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4. of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.
6. A source that is required to open an existing permit

pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

7. For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.
8. Applications for initial Phase II Acid Rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.
2. The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.
3. If, while processing an application that has been determined or deemed to be complete, the cabinet determines that additional information is necessary, it may require the information in writing and set a reasonable deadline for response.
4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

- (2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

- (3) Standard application form and required information.
- (a) Applications for permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.
 - (b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.
 - (c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (f) below:
 - (d) The application shall provide the following emissions related information:
 - 1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in Section 2 of this administrative regulation. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.
 - a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.
 - b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.
 - c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22)(b).
 - 2. Identification and description of all points of emissions described in subparagraph 1. of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.
 - 3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or limit emissions.
 5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.
 7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.
 8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.
- (e) The application shall identify the following air pollution control requirements, except as provided in subparagraph (d)1.b. of this paragraph:
1. Citation and description of all applicable requirements, and
 2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.
- (f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.
- (g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.
- (h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)0) of this administrative regulation.
- (i) The application shall provide a compliance plan containing the following:
1. A description of the compliance status of the source for all applicable requirements as follows:
 - a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.
 - b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.
 2. A compliance schedule as follows:
 - a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the

applicable requirement.

- b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.
 - 3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.
 - 4. In Phase II of the Acid Rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the Acid Rain portion of a compliance plan for an affected source, except as provided in the Acid Rain program for the schedule and method the source will use to achieve compliance with the Acid Rain emissions limitations.
- (j) The application shall identify requirements for compliance certification, including the following:
- 1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;
 - 2. A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;
 - 3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and
 - 4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.
- (4) Certification by Responsible Official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(30) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content.

- (1) Standard permit requirements. A permit issued pursuant to this

administrative regulation shall include the following elements:

- (a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:
 - 1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;
 - 2. A statement that the source shall comply with all applicable requirements;
 - 3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable.
 - 4. For major sources all applicable requirements for emissions units;
 - 5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and
 - 6. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22)(b) of this administrative regulation.
 - 7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.
- (b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.
- (c) Monitoring and related record keeping and reporting requirements.
 - 1. Each permit shall contain the following monitoring requirements:
 - a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);
 - b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of record keeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance

with the permit, as reported pursuant to subparagraph 3. of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of this sentence; and

- c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.
2. Each permit shall incorporate the following recordkeeping requirements, if applicable:
- a. Records of required monitoring information that include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurements;
 - ii. The dates analyses were performed;
 - iii. The company or entity that performed the analyses;
 - iv. The analytical techniques or methods used;
 - v. The results of analyses; and
 - vi. The operating conditions at the time of sampling or measurement;
 - b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
3. Each permit shall incorporate the following reporting requirements, if applicable:
- a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.
 - b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.
- (d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the Acid Rain program.
- 1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the

- Acid Rain program if the increases do not require a permit revision in another applicable requirement.
2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.
 3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.
- (e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.
- (f) Provisions stating the following:
1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, is also a violation of 42 USC 7401 through 7671q (The Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.
 2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.
 3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.
 4. The permit shall not convey property rights or exclusive privileges.
 5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.
- (g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.
- (h) Emissions Trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
- (i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:
1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in

which it is operating;

2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and
 3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.
- (j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:
1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;
 2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and
 3. Shall meet all applicable requirements and the requirements of this administrative regulation.
 4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.
- (2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements, shall be enforceable by the U.S. EPA and citizens.
- (3) Compliance requirements. All permits shall contain the following elements for compliance:
- (a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.
 - (b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:
 1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;
 2. Have access to and copy, at reasonable times, any records

required by the permit:

- a. During normal office hours, and
 - b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and
3. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:
 - a. During all hours of operation at the source,
 - b. For sources operated intermittently, during all hours of operation at the source and the hours between 8:00 am and 4:30 pm, Monday through Friday, excluding holidays, and
 - c. During an emergency.
 4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:
 - a. During all hours of operation at the source,
 - b. For sources operated intermittently, during all hours of operation at the source and the hours between 8:00 am and 4:30 pm, Monday through Friday, excluding holidays, and
 - c. During an emergency.
- (c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.
 - (d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:
 1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and
 2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.
 - (e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);
 2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:
 - a. The identification of each term or condition of the permit that is the basis of the certification;
 - b. The compliance status;
 - c. Whether compliance was continuous or intermittent;
 - d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and
 - e. Other facts as the cabinet may require to determine the compliance status of the source;
 4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain permits pursuant to 40 CFR Part 70, as well as to the cabinet; and
 5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 42 USC 7504(b) (Sections 114(a)(3) and 504(b) of the Act),
- (f) A specific condition, for a constructing, reconstructing, altering, or modifying source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.
- (g) Other provisions required by the cabinet.
- (4) General permits.
- (a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the Acid Rain program.
 - (b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit,

the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

- (5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:
 - (a) Conditions that will assure compliance with all applicable requirements at all authorized locations;
 - (b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and
 - (c) Conditions that assure compliance with all other provisions of this administrative regulation.
- (6) Permit shield.
 - (a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:
 - 1. The applicable requirements are included and are specifically identified in the permit; or
 - 2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
 - (b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.
 - (c) Nothing in this subsection or in a permit shall alter or affect the following:
 - 1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;
 - 2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;
 - 3. The applicable requirements of the Acid Rain program; or
 - 4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).
- (7) Emergency provision.
 - (a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.
 - (b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;
 3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3.b. of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.
- (c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.
- (d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

- (1) Processing applications from existing sources for permits covering the entire source.
- (a) An existing major source proposing to accept permit limitations to become a synthetic minor or conditional major source. Applications received from sources submitted pursuant to Section 3(1)(a)1.a. of this administrative regulation shall be processed as follows:
1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and. provide notice of the draft permit:
 - a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or
 - b. For public review pursuant to Section 7 if the source is not required to obtain a permit pursuant to 40 CFR Part 70.
 2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation is complete.
 3. If a proposed permit is issued:
 - a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this

administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

- b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.
 - 4. Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.
 - 5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.
 - 6. An existing source shall follow the applicable procedures in subparagraphs 1. through 4. of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.
- (b) All other existing sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. Applications received from existing sources pursuant to Section 3(1)(a)1.b. and 2. of this administrative regulation shall be processed as follows:
- 1. Draft permit. The cabinet shall issue or deny a draft permit:
 - a. During the first two (2) years after the classification date for 60% of the initial round of applications from existing sources that emit at least 80% of the emissions in the KyEIS.
 - b. Within sixty (60) days after the application is deemed complete for minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.
 - 2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.
 - 3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
 - 4. Final permit. The cabinet shall issue or deny a final permit:
 - a. For One-fifth (115) of the initial round of applications from existing major sources each year for five (5) years after the classification date.
 - b. Within eighteen (18) months after the application is deemed complete, for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.

- c. Within six (6) months after receiving a complete application, for permit renewals.
 - 5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.
- (c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3. shall be processed as follows:
 - 1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.
 - 2. The source shall operate in compliance with the existing permit, authorization to operate, or order of the cabinet until a final permit is issued or denied.
- (2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4. of this administrative regulation.
 - (a) Proposed changes that are subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements.
 - 1. Applications received from existing sources proposing to construct,,reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 prior to the date the source submits an application for a federally enforceable permit for the entire source shall be processed as follows:
 - a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determination to the U.S.EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.
 - b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.
 - c. The source shall construct and operate in compliance with the permit issued in subparagraph 1.b. of this paragraph until a final permit for the entire source is issued or denied, except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination.
 - d. The permit issued pursuant to subparagraph 1.b. of this paragraph shall be incorporated into the

application or permit for the entire source as an administrative amendment.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 after the source submits an application for a federally enforceable permit for the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1. of this paragraph.

(b) Sources proposing changes that are not subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection 1(a) of this section.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the sources's application for a permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.

b. Draft permit. The cabinet shall issue or deny a draft permit, for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed

pursuant to the applicable provisions of subsection 1(a) of this section.

- c. The cabinet shall process a draft permit issued pursuant to subparagraph 2.b. of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this administrative regulation.

- (3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modification of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(1)(a)5. of this administrative regulation shall be processed as follows:

- (a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:

- 1. Constructing or reconstructing sources that are subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

- a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.
- b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR part 70.
- c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.
- d. If the source is not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:
 - i. The source shall construct and operate in compliance with the proposed permit until a

final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.

- ii The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and
- iii. The-cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

- 2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:
 - a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.
 - b. Public, EPA, and affected state review.
 - i. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.
 - ii. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.
 - c. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.
 - d. If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:
 - i. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
 - ii. Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.
- 3. Processing applications for the proposed construction,

reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

- (b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.
- (4) Compliance demonstration. A source that is constructing, reconstructing, altering, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.
 - (a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.
 - (b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.
- (5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The source's authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.
- (6) General Requirements. For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.
- (7) Permit duration and renewal.
 - (a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.
 - (b) Permit renewal.
 - 1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a) of this

administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.
3. If a timely and complete application for a permit renewal is submitted pursuant to Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.
4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings.

- (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:
 - (a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.
 - (b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.
 - (c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
 - (d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.
 - (e) Administrative permit amendments for the Acid Rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651 q (Title IV of the Act).
- (2) Permit Revisions. Except as provided in the Acid Rain Program, the procedures for revising a permit shall be as follows:
 - (a) Minor permit revision procedures.
 1. Minor permit revision procedures shall be used for permit revisions that:
 - a. Do not violate an applicable requirement;
 - b. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
 - c. Do not require or change a case-by-case determination

of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

- d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:
 - i. A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act); and
 - ii. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);
 - e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and
 - f. Are not required to be processed as a significant permit revision.
2. Notwithstanding this paragraph and paragraph (b)1. of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.
3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:
- a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;
 - b. The source's suggested draft permit;
 - c. Certification, by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and
 - d. For federally enforceable permits completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.
4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of

the requested minor permit revision.

5. Timetable for issuance.
 - a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15)-days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:
 - i. Issue the minor permit revision as proposed;
 - ii. Deny the minor permit revision application;
 - iii. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or
 - iv. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.
 - b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:
 - i. Issue the minor permit revision as proposed;
 - ii. Deny the minor permit revision application; or
 - iii. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.
6. The Source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5.a. through c. of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.
7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

- (b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.
1. Criteria. Group processing shall be used only for permit revisions that:
 - a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and
 - b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable emissions provided in the definition of "major source" in Section 1(22) of this administrative regulation, or five (5) tons per year, whichever is least.
 2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:
 - a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.
 - b. The source's suggested draft permit revision.
 - c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.
 - d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1.b. of this paragraph.
 - e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.
 - f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.
 3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1.b. of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected

states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5. of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection(2)(a)5a. through d. of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.
 5. The source's ability to make a change. Subsection (2)(a)6. of this section shall apply to permit revisions eligible for group processing.
 6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.
- (c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.
1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or record keeping permit terms or conditions, shall be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.
 2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.
- (d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:
1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act);
 2. The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions;
 3. For each change, the owner or operator notifies the cabinet

and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

- a. A brief description of the change within the Permitted facility,
- b. The date on which the change will occur,
- c. Any change in emissions, and
- d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3. of this administrative regulation.
2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the Acid Rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;
3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

- (c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.
- (4) Reopenings for cause by the U.S. EPA. (a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.
 - (b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.
 - (c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.
 - (d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.
 - (e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

- (1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:
 - (a) Issuance of a draft permit;
 - (b) Intended denial of a permit application;
 - (c) Issuance of a draft significant permit revision;
 - (d) Issuance of a draft general permit;
 - (e) Issuance of a permit renewal;
 - (f) Scheduling of a public hearing pursuant to subsection (7) of this section; and
- (2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid

advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

- (3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:
 - (a) The applicant;
 - (b) For sources subject to 401 KAR 51-017, officials and agencies having authority over the locations where the source will be located, as follows:
 - 1. The Administrator of the U.S. EPA through the appropriate regional office;
 - 2. Local air pollution control agencies;
 - 3. The chief executive of the city and county;
 - 4. Any comprehensive regional land use planning agency; and
 - 5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;
 - (c) Affected states; and
 - (d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.
- (4) Public notice and the notice for those on the mailing list shall include the following minimum information:
 - (a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;
 - (b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;
 - (c) A brief description of the business conducted at the facility or activity involved in the permit action;
 - (d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:
 - 1. Copies of the draft permit;
 - 2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and
 - 3. All other materials available to the cabinet that are relevant to the permit decision;

- (e) A brief description of the comment procedures, including, the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and
 - (f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.
- (5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.
- (6) Public comment.
- (a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.
 - (b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.
 - (c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.
- (7) Public Hearings.
- (a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.
 - (b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.
 - (c) The cabinet shall give notice of a public hearing at least thirty (30) days- in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:
 - 1. Reference to the dates of previous public notices relating to the permit;
 - 2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.
- (d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.
- (e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.
- (f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.
- (8) Public Record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.
- (9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.
- (10) The following actions shall be exempt from this section:
 - (a) Permit revisions qualifying for minor permit revision procedures, including group processing;
 - (b) Administrative permit amendments; and

Section 8. This section was not approved into the State Implementation Plan (SIP).

Section 9. This section was not approved into the State Implementation Plan (SIP).

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS containing the most recent information appropriate to that source.

- (1) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its actual emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.
- (2) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.
- (3) Each date past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline,

the cabinet shall estimate the actual emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

Section 11. This section was not approved into the State Implementation Plan (SIP).

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